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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/815,988      | 03/31/2004  | Roger N. Johnson     | 1890.001US1         | 7285             |

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01/05/2005

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/815,988

**Applicant(s)**

JOHNSON, ROGER N.

**Examiner**

Stephen Gravini

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-48 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-18, drawn to an apparatus subcombination, classified in class 126, subclass 92B.
- II. Claims 19-23, drawn to a method subcombination, classified in class 126, subclass 91R.
- III. Claims 24-30, drawn to an apparatus subcombination, classified in class 126, subclass 67.
- IV. Claims 31-35, drawn to a method subcombination, classified in class 126, subclass 17.
- V. Claims 36-39, drawn to an apparatus subcombination, classified in class 126, subclass 99R.
- VI. Claims 40-45, drawn to an apparatus subcombination, classified in class 126, subclass 262.
- VII. Claims 46-48, drawn to a method subcombination, classified in class 126, subclass 509.

The inventions are distinct, each from the other because of the following reasons:

Inventions of groups II, IV, & VII and groups I, III, V & VI are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either:  
(1) the process as claimed can be practiced by another materially different apparatus or

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by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus or by hand because the independently claimed method process steps including any one of collecting and guiding hot collected gases, positioning a second radiant energy source with providing additional radiant heat from that source, and inhibiting convective airflow are not limitations in the independently claimed apparatus invention.

Inventions of group I and groups III, V, & VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the apparatus claimed in group I subcombination has separate utility such as including a vent hood with an exit flue duct. See MPEP § 806.05(d).

Inventions of group II and groups IV & VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the method subcombination claimed in group II has separate utility such as collecting hot gases and guiding the collected hot gases toward an exhaust duct. See MPEP § 806.05(d).

Inventions of group III and groups I, V, & VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the apparatus claimed in group III subcombination has separate utility such as a first radiant

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heating element which produces hot air that moves in a convection current and a second radiant heating element. See MPEP § 806.05(d).

Inventions of group IV and groups II & VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the method subcombination claimed in group IV has separate utility such as positioning a second radiant energy source near a first radiant energy source and providing additional radiant heat from the second source. See MPEP § 806.05(d).

Inventions of group V and groups I, III, & VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the apparatus claimed in group V subcombination has separate utility such as a second radiant heating element heated by radiant heat from a first radiant heating element. See MPEP § 806.05(d).

Inventions of group VI and groups I, III, & V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the apparatus claimed in group VI subcombination has separate utility such as radiant heat production at a face of a first heating element and an airflow inhibitor. See MPEP § 806.05(d).

Inventions of group VII and groups II & IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct

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from each other if they are shown to be separately usable. In the instant case, the method subcombination claimed in group VII has separate utility such as inhibiting convective airflow. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for groups I, III, V, & VI is not required for groups II, IV, & VII, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is considered proper because each invention is independently claimed, which is a prima facie showing that the inventions are intended to be independent and distinct. Examining each of these independent and distinct inventions, with separately independently claimed features, would represent a serious burden on the Office to patentably distinguish each grouped invention from the prior art.

Since the restriction is complex and examiner knows from past experience that an election probably will not be made by telephone, this restriction action is considered appropriate under MPEP 812.01.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272

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4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira S. Lazarus can be reached on 571 272 4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG  
January 3, 2005

